

Staff Summary Report



Council Meeting Date: June 5, 2008

Agenda Item Number: _____

SUBJECT: Approve the intergovernmental agreement with the City of Maricopa regarding mid-day express transit service between Maricopa and the City of Tempe.

DOCUMENT NAME: 20080605PWgj02 **TRANSPORTATION PLANNING (1101-01)**

SUPPORTING DOCS: Yes

COMMENTS: N/A.

PREPARED BY: Greg Jordan, Transit Administrator, 858-2094

REVIEWED BY: Carlos de Leon, Deputy Public Works Manager, 350-8527

APPROVED BY: Glenn Kephart, Public Works Manager, 350-8205

LEGAL REVIEW AS

TO FORM BY: Teresa Voss, Assistant City Attorney, 350-8814

FISCAL NOTE: N/A.

RECOMMENDATION: Approve the intergovernmental agreement with the City of Maricopa regarding mid-day express transit service between Maricopa and the City of Tempe.

ADDITIONAL INFO: The City of Maricopa desires to provide mid-day express bus service between Maricopa and the City of Tempe. This agreement allows the City of Maricopa to operate two mid-day inbound trips that will transport passengers from Maricopa to Arizona Mills Mall or to select bus stops along Mill Avenue and two mid-day return trips that will provide service from the same Tempe locations to Maricopa. The service was scheduled to begin in April 2008 but Maricopa delayed implementation in order to provide back-up vehicles for its City of Phoenix commuter service. The service is scheduled to begin after the city councils for Tempe and Maricopa approve the IGA. It is expected that the City of Maricopa, who will bear the full cost of services provided under this agreement, will contract with a third-party provider. There is no direct cost to the City of Tempe.

**INTERGOVERNMENTAL AGREEMENT
FOR USE OF TEMPE TRANSIT FACILITIES BETWEEN
THE CITY OF TEMPE
AND
THE CITY OF MARICOPA**

NO. C2008-__

This Intergovernmental Agreement ("Agreement") is made and entered into this _____ day of _____, 2008, ("Effective Date") by and between the City of Tempe, a municipal corporation duly organized and existing under the laws of the State of Arizona located at 31 E. Fifth Street, Tempe, Arizona ("Tempe") and the City of Maricopa, a municipal corporation ("Maricopa").

RECITALS

A. This Agreement is authorized and entered into between the Parties pursuant to A.R.S. § 11-952. Tempe is further authorized to enter into this Agreement pursuant to § 1.03 of the Tempe City Charter. By their signatures below, the attorneys for Tempe and Maricopa have determined that the Agreement is in proper form and is within the powers and authorities granted under the laws of this state to its respective public agencies.

B. Tempe is empowered by Tempe City Charter Section 1.03 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Tempe.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the covenants and promises set forth below, the City of Maricopa and the City of Tempe hereby mutually agree as follows:

AGREEMENT

1. **Purpose of Agreement.** The purpose of this Agreement is to set out the terms and conditions under which Tempe will make certain bus stops owned by and located within Tempe jurisdictional boundaries available on a non-exclusive basis to Maricopa to be used as bus stops for transit passenger buses owned or operated by Maricopa ("Premises"). Premises are detailed in Exhibit A. Access and use of the Premises is limited, among other limitations set forth in this Agreement, to transit and transit related services provided by Maricopa in accordance with the description of Transit and Transit Related Services and Schedule of Maricopa Transit Service contained in Exhibit B. The parties expect economic and efficiency benefits will result for each party through the proposed collaboration whereby Tempe will make certain transit stop sites owned by and located within Tempe jurisdictional boundaries available on a non-exclusive basis to Maricopa to be used for occasional use as a bus stop for transit passenger buses owned or operated by Maricopa.

2. **Term of Agreement.** This Agreement shall commence on June 6, 2008 and shall continue in full force and effect until May 6, 2010 unless sooner terminated as provided in this Agreement. In addition, the parties may extend this Agreement for an additional two (2) year period not to exceed one (1) additional two (2) year period. The parties shall execute a written Addendum to this Agreement extending its terms in accordance with Section 11 of this Agreement no later than sixty (60) days prior to the end of each term of the Agreement. This Agreement is not a multi-year fiscal obligation of either party and is not subject to annual appropriation by the parties.

3. **Permitted Use of Premises.**

3.1. Maricopa shall be permitted to use the Premises on a non-exclusive basis for passenger waiting, embarking and disembarking as set forth further in Exhibit B. When using the Premises, Maricopa shall comply with all applicable federal, state or city laws and regulations and with the policies and regulations of the Tempe Transportation Division, which Tempe will provide to Maricopa within ten (10) days of the execution of this Agreement, pertaining to the use and occupancy of the Premises.

3.2. Maricopa shall not impede or interfere with Tempe's title, possession or operation of the Premises or use or allow the Premises to be used for any unlawful purpose.

3.3 Maricopa's non-exclusive use of the Premises shall not in any way interfere with the services, operation and use of the Premises by Tempe and Valley Metro transit services and Tempe and Valley Metro employees, agents, representatives, passengers and invitees.

3.4 Maricopa, its employees, agents, and representatives shall not harm the Premises, shall not commit or allow to be committed, any waste or nuisance on or about the Premises or subject the Premises to any use that would damage any portion of the Premises or raise or violate any insurance coverage maintained by any party or by Valley Metro, and shall leave the Premises at all times in as good order and condition as existed prior to Maricopa's non-exclusive use.

3.5 To the extent it has knowledge, Maricopa shall not allow a number of persons in the Premises in excess of the legal or normal capacity of the Premises.

3.6 Maricopa shall not construct or place, or allow to be constructed or placed, any signs, displays, advertisements, decorations, awnings, marquees, or structures on the Premises or any portion of the Premises or surrounding structures unless approved in writing by Tempe.

3.7 Maricopa agrees to develop, produce, and deliver to Tempe route identifier stickers for the Premises served by Maricopa's transit service. All route identifier stickers provided by Maricopa will include Maricopa contact information for passengers to make inquiries regarding Maricopa's bus service. Maricopa agrees to

coordinate and consult with Tempe on the design and format of route identifier stickers. Tempe shall install the stickers at the appropriate location on the Premises.

4. **Maintenance of Premises.** Tempe shall maintain and keep the Premises in good repair. Maricopa shall immediately notify Tempe of any damage to the Premises caused by Maricopa or its employees, agents, representatives, passengers or invitees. Maricopa shall also notify Tempe of any damage to the Premises of which Maricopa has knowledge regardless of who may have caused the damage.

5. **Insurance.** Maricopa shall purchase and maintain in full force and effect during the term of this Agreement and any renewals thereof, at Maricopa's sole expense, commercial general liability insurance with companies and through brokers licensed to do business in the state of Arizona, including premises liability coverage against claims for bodily injury, personal injury and death or property damage occurring in connection with Maricopa's non-exclusive use of any portion of the Premises, which insurance shall include Tempe as an additional insured, as well as worker's compensation insurance in amounts required by applicable law. The minimum limit of insurance requirements shall not be less than Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate. Maricopa shall also purchase Automobile Liability insurance with companies and through brokers licensed to do business in the state of Arizona with limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. The policies shall contain a waiver of subrogation. Maricopa shall include all subcontractors as additional insureds under its policies or it shall require any such subcontractor to furnish separate certificates and endorsements for each subcontractor to Maricopa. Such insurance policies shall provide coverage for Tempe's contingent liability on such claims or losses that arise out of Maricopa's non-exclusive use of the Premises under this Agreement that may occur as a result of any act, error or omission by Maricopa, its agents, representatives, or employees.

Prior to commencing any activities pursuant to this Agreement, Maricopa shall provide Tempe with appropriate certificates in full force and effect evidencing the required insurance coverage in effect and naming Tempe as an additional insured and certificate holder. The certificates must provide that Tempe be given no less than fifteen (15) days advance written notice in the event of material change in coverage, cancellation or non-renewal.

Insurance provisions set forth in this Section are separate and independent from the indemnity provisions of Section 6 and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions.

6. **Liability and Indemnity.**

6.1 Maricopa shall conduct its activities in and around the Premises in a careful and safe manner. As a material part of the consideration to Tempe, Maricopa assumes all risk of damage to and loss or theft of property, and injury or death to persons related to Maricopa's use or occupancy of any portion of the Premises from any cause and Maricopa waives all such claims against Tempe. To the fullest extent permitted by law,

Maricopa shall defend, indemnify, and hold harmless Tempe, its agents, representatives and employees from all claims, demands, suits, actions, loss, cost, liens and liability of every kind, including any attorneys' fees and/or litigation costs, which may be brought or made against or incurred by Tempe on account of loss or damages to any property and for injuries to or death of any person arising out of any act or omission by Maricopa, its agents, representatives, employees, or subcontractors, arising out of their use of the Premises or arising out of workers' compensation claims or unemployment disability compensation claims of employees of Maricopa or out of claims under similar such laws. Maricopa's obligation under this Section 6.1 shall not extend to any liability caused by the sole negligence of Tempe or its employees. Where both Tempe and Maricopa, including their employees, agents or representatives participated in the liability causing event, each party shall contribute to the common liability a pro rata based upon its relative degree of fault as established by compromise, arbitration or litigation.

6.2 If any third party institutes an action at law or suit in equity against Maricopa arising out of or resulting from or under this Agreement, Maricopa shall promptly notify Tempe of such within five (5) business days of receipt of such suit or claim. If Tempe tenders a claim for representation to Maricopa, no later than seven (7) business days after submission of such tender Maricopa shall provide written notice to Tempe of the determination made.

6.3 If any action at law or suit in equity is instituted by any third-party against Tempe arising out of or resulting from the acts or omissions of Maricopa, its contractors, subcontractors agents or anyone directly or indirectly employed or contracted by any of them in performing work related to transit services as set forth in this Agreement, and if Maricopa failed to provide insurance coverage to Tempe against such action as required in this Agreement or otherwise refuses to defend such action, Tempe shall have the right to conduct and control, through counsel of its choosing, the defense of any third-party claim, action or suit, and may compromise or settle the same, provided that Tempe shall give the Maricopa advance notice of any proposed compromise or settlement. Tempe shall permit Maricopa to participate in the defense of any such action or suit through counsel chosen by Maricopa, provided that the fees and expenses of such counsel shall be borne solely by Maricopa. If Tempe permits Maricopa to undertake, conduct and control the conduct and settlement of such action or suit, Maricopa shall not consent to any settlement that does not include as an unconditional term thereof the giving of a complete release from liability with respect to such action or suit to Tempe. Maricopa shall promptly reimburse Tempe for the full amount of any damages, including attorneys' fees and costs, incurred in connection with any such action.

7. **Subrogation.** Maricopa, its, contractors, sub-contractors, and agents waive and relinquish any right of subrogation or claim against Tempe, its agents, representatives, and employees arising out of the non-exclusive use of the Premises (including any equipment) by any party in performance of this Agreement.

8. **Default.** If Maricopa fails to comply with or observe any provisions of this Agreement, in addition to any other remedy that may be available to Tempe by reason of such

failure, whether at law or equity, Tempe may immediately terminate this Agreement and all rights of Maricopa hereunder.

9. **Suspension and Termination.** Tempe may, by written notice, direct Maricopa to suspend its use of the Premises for such period of time as may be determined by Tempe to be necessary or desirable. Upon receipt of such termination notice, Maricopa shall immediately discontinue use to the Premises under this Agreement. Either party may terminate this Agreement for any reason upon sixty (60) days prior written notice delivered by hand or by certified mail return receipt requested.

10. **Waiver.** The failure of either party to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies shall not release the other party from any of its responsibilities or obligations imposed by this Agreement and shall not be deemed a waiver of any rights to insist upon strict performance of this Agreement.

11. **Entire Contract.** This Agreement embodies the entire contract between Tempe and Maricopa. The parties shall be bound by or be liable for any statement or representation of any nature not set forth in this Agreement. Changes of any of the provisions of this Agreement shall not be valid unless set forth in writing and signed by both parties.

12. **Assignability.** Maricopa shall not have the right to assign this Agreement or any interest in this Agreement or allow any other person or entity to use or occupy any of all of the Premises without the prior written consent of Tempe, which discretion may be granted or withheld at Tempe's sole discretion. In the event of Tempe's consent to assignment of this Agreement, all of the terms, provisions and conditions of the Agreement will be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

13. **Duties and Obligations.** The duties and obligations imposed by the Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Tempe shall constitute a waiver of any right or duty afforded under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

14. **Conflict of Interest.** The parties understand that this Agreement is subject to cancellation pursuant to A.R.S. § 38-511 without penalty or further obligation if any persons significantly involved in initiating, negotiating, securing, drafting or creating this Agreement is, at any time while this Agreement or any extension hereof is in effect, an employee or agent of the other party, in any capacity, or a consultant to the other party, regarding the subject matter of this Agreement.

15. **Relationship.** The parties agree that neither Maricopa nor any employees or other personnel of Maricopa will for any purpose be considered employees of Tempe and with respect to Maricopa and any employees or other personnel of Maricopa, Tempe shall not be responsible in any manner for the supervisions, daily direction and control of Maricopa and any of its employees or other personnel or the payment of salary, including withholding income taxes and social security,

workers' compensation and disability benefits for Maricopa and any of its employees or other personnel.

16. **Governing Law.** The laws of the State of Arizona shall govern this Agreement. The Arizona Superior Court in and for Maricopa County or the United States District Court, District of Arizona shall have subject matter jurisdiction hereof.

17. **Civil Rights.** Each party shall comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d; 49 U.S.C. § 5332; and 49 C.F.R. Part 21, and any implementing requirements the Federal Transit Administration may issue. These regulations provide that no person shall, on the grounds of race, age, religion, gender, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity included in or resulting from this Agreement.

18. **Americans With Disabilities Act (ADA).** Each party shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d), and any implementing requirements the Federal Transit Administration may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

19. **Equal Employment Opportunity.** Neither party shall discriminate against any employee or applicant for employment because of race, age, religion, color, gender, disability, age, or national origin. The parties agree to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, age, religion, color, gender, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

20. **Severability.** If any clause or provision of this Agreement is declared to be invalid by any court of competent jurisdiction, then and in that event, the remaining provisions hereof shall remain in force. In lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there shall be added as a part of this Agreement, a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

21. **Notices.** Notices given to pursuant to the provisions of this Agreement, or necessary to carry out its provisions, shall be in writing, and delivered personally to or mailed postage prepaid, to:

City of Tempe -Transportation Division
20 East 6th Street
Tempe, AZ 85281
480-350-2775: Office
480-858-2097: Fax

Attention: Gregory Jordan, Transit Administrator
greg_jordan@tempe.gov

City of Maricopa
45145 W. Madison Avenue
P.O. Box 610
Maricopa, AZ 85239
520-316-6948
520-568-9120
Attention: Kellee Kelley, Transit Coordinator
kellee.kelley@maricopa-az.gov

22. **Filing of Agreement.** The parties shall file this Agreement with the Secretary of State as required by A.R.S. § 11-952(G).

DATED this _____ day of _____, 2008.

CITY OF TEMPE, ARIZONA

CITY OF MARICOPA, ARIZONA

Hugh Hallman
Mayor

Anthony O. Smith
Mayor

The above Agreement has been reviewed pursuant to A. R. S. § 11-952, by the undersigned attorney for the City of Tempe, Arizona who has determined that it is in the proper form and is within the powers and authority granted to the City of Tempe, Arizona.

The above Agreement has been reviewed pursuant to A. R. S. § 11-952, by the undersigned attorney for the City of Maricopa, Arizona who has determined that it is in the proper form and is within the powers and authority granted to the City of Maricopa, Arizona.

Andrew Ching
City Attorney
City of Tempe

Denis Fitzgibbons
City Attorney
City of Maricopa

ATTEST

Jan Hort
City Clerk
City of Tempe

ATTEST

Vanessa Bueras
City Clerk
City of Maricopa

EXHIBIT A

Premises

The premises stipulated in this agreement are defined as the bus stops at the following locations:

Northbound Direction

- Arizona Mills Mall Transit Center (Northeast corner of facility)
- Mill Ave. & Southern Ave. (Bus bay at northeast corner of intersection)
- Mill Ave. & Broadway Rd. (Bus bay at northeast corner intersection)
- Mill Ave. & 13th St. (Bus stop at southeast corner of intersection – *No waiting permitted*)
- Mill Ave. & 10th St. (Bus stop at northeast corner of intersection – *No waiting permitted*)
- University Dr. & Mill Ave. (Bus stop on University Dr. in front of Chilli's Restaurant - *No waiting permitted*)
- College Ave. & 6th Street (Bus bay at northeast corner of College Ave. and 6th Street)

Southbound Direction

- College Ave. & 6th Street (Bus bay at northeast corner of College Ave. and 6th Street)
- Mill Ave. & University Dr. (Bus stop at southwest corner of intersection - *No waiting permitted*)
- Mill Ave. & 10th St. (Bus stop at southwest corner of intersection – *No waiting permitted*)
- Mill Ave. & 13th St. (Bus stop at southwest corner of intersection – *No waiting permitted*)
- Mill Ave. & Broadway Rd. (Bus stop at northwest corner of intersection in right turning lane adjacent to Tempe High School – *No waiting permitted*)
- Mill Ave. & Southern Ave. (Bus stop at southwest corner of intersection – *No waiting permitted*)
- Arizona Mills Mall Transit Center (Northeast corner of facility)

EXHIBIT B

Transit and Transit Related Services and Schedule of Maricopa Transit Service

The City of Maricopa will operate passenger transit service within the City of Tempe according to the following schedule. Passengers wishing to use this service may embark and disembark at the bus stop locations noted in Exhibit A based on the following schedule.

City of Maricopa to City of Tempe Transit Service

<i>NORTHBOUND : City of Maricopa to City of Tempe</i>							
Maricopa	Arizona Mills Mall	Mill & Southern	Mill & Broadway	Mill & 13th St.	Mill & 10th St.	Mill & University	College & 6th
10:00am	10:35	10:42	10:46	10:48	10:49	10:50	10:52
12:00pm	12:35	12:42	12:46	12:48	12:49	12:50	12:52
<i>SOUTHBOUND : City of Tempe to City of Maricopa</i>							
College & 6th	Mill & University	Mill & 10th St.	Mill & 13th St.	Mill & Broadway	Mill & Southern	Arizona Mills Mall	Maricopa
12:00pm	12:04	12:05	12:06	12:08	12:12	12:20	1:00
2:00pm	2:04	2:05	2:06	2:08	2:12	2:20	3:00